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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1519th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 18 July 1996, at 3 p.m.

Chairman: Mr. AGUILAR URBINA

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Peru (CCPR/C/83/Add.1, HRI/CORE/1/Add.43/Rev.1 and M/CCPR/C/57/LST/PER/4)

1. The members of the Peruvian delegation took places at the Committee table.

2. The CHAIRMAN welcomed the Peruvian delegation, led by Mr. Hermoza-Moya, Minister of Justice, who would make a statement to introduce the report. The Peruvian delegation would then reply to the questions from section I of the list of issues to be taken up in connection with the consideration of the third periodic report of Peru (M/CCPR/C/57/LST/PER/4), after which the members of the Committee might ask additional questions to be answered directly by the delegation.

3. Mr. HERMOZA-MOYA (Peru), Minister of Justice, thanked the Committee for having agreed to postpone the original date for presentation of the third periodic report of Peru (CCPR/C/83/Add.1) so that he could represent his country on that occasion, thereby demonstrating the importance that the Peruvian Government attached to the fulfilment of the obligations it had undertaken by acceding to the Covenant.

4. Peru was engaged in the promising but demanding process of restructuring its economy and society after one of the worst periods of terrorist violence in the history of Latin America. What would become of the civil and political rights of a people which had had to endure its Government's bankruptcy, as illustrated by economic disaster with an annual inflation rate of 7,650 per cent, and systematic acts of terrorism (car bombings and massacres in rural and urban areas, resulting in over 25,000 dead and more than $25 billion worth of property damage). That situation had led to the adoption of drastic but essential measures such as the anti-terrorist legislation, the severity of which was a response to the urgent need to put an end to situations that had made the fight against terrorism totally ineffective, such as the release of criminals responsible for terrorist acts or the fact that judges, having received threats, had confined themselves to handing down light sentences. However, thanks to that legislation, which was of a temporary nature and was being made increasingly flexible as the process of pacification gathered strength, and to the economic recovery, the chaos of the past had become a distant nightmare that the Peruvians wished to forget.

5. The irreversible process of pacification that had begun with the capture of the principal terrorist leaders and the dismantling of their organizations, Peru's re-entry into the international economy, and the control and, later, reduction of inflation and adoption of measures aimed at attracting foreign capital had been decisive factors in the strengthening of the country's democratic institutions that guaranteed the full exercise of civil and political rights. It had also been possible, as a result, to set up a policy to combat poverty.

6. Concurrently with those efforts at recovery, Peruvians had demonstrated the full exercise of their civil and political rights through the election of the Democratic Constituent Congress in 1992, the holding of municipal elections in 1992 and 1995, the organization of the constitutional referendum in October 1993, and the election of the President, Vice-Presidents and members of Congress in 1995. The recent election by Congress of an Ombudsman was another example of the process of strengthening democratic institutions. In accordance with the Constitution, the Ombudsman was responsible for protecting the constitutional and human rights of individuals and of society and for supervising the ways in which the Government carried out its functions and public services were provided. The Ombudsman had selected the areas to which he would give priority (women, children and internally displaced persons) and had proposed the appointment of specialized mediators at the national level.

7. Also worthy of note was the election of the members of the Constitutional Court, an institution which played a key role in guaranteeing respect for the rights set forth in the Constitution since it was responsible for preserving the primacy of that instrument through proceedings for unconstitutionality, which could be taken in regard to regulations with the rank of laws that contravened the Constitution. The Constitutional Court could also hear extraordinary appeals at last instance against Supreme Court rulings, legally authorized appeals and appeals against refusal of proceedings for habeas corpus or actions of amparo and execution orders.

8. The above-mentioned institutions were part of the overall system for ensuring full respect for human rights and, generally speaking, the full functioning of the rule of law, a system in which the Judiciary played a major role. Peru was also in the process of modernizing its public administration system, including the Judiciary, the Public Prosecutor's Department and the national prison administration. The goal of that overall reform of the justice system was to improve its quality and efficiency, and international cooperation was essential if the reform was to be carried through.

9. In that regard, he mentioned the establishment of the Judicial Coordination Council (Act No. 26623), which was made up of the President of the Supreme Court, the President of the Constitutional Court, the Minister of Justice, the President of the National Council of the Judiciary, the Attorney General, the Chairman of the Governing Board of the National College of Magistrates, the Head of the Bar Association, a representative of the Law Faculties of the national universities and a representative of the Law Faculties of the private universities. Owing to its inter-institutional nature, the Council was responsible for strengthening the links between its various composite parts with regard to the functioning of the judicial system while respecting the autonomy and independence of each body. The Judicial Coordination Council did not control the Office of the Attorney General, the Judiciary or the National Council of the Judiciary, nor did it intervene in the administration of justice. It took steps to expedite the administration of justice by setting up greater numbers of ordinary courts, specialized courts, and specialized offices of the Public Prosecutor's Department.

10. The prison system was undergoing a reform, one of the principal goals of which was to achieve true rehabilitation of prisoners; that reform included a

survey that would yield valuable information on the current situation in the prisons, and also the establishment of a specialized school to train prison staff.

11. In order to modernize the prison system, a plan was being introduced to set up a computer network linking all the country's prisons with each other, and also with the Judiciary and Public Prosecutor's Department. Measures had also been taken to improve and expand the services provided to prisoners by setting up prison clinics sufficiently well-equipped for the performance of high-risk surgical procedures. Several weeks previously, in a high-security prison (Miguel Castro Castro), the first clinic for prisoners in Lima, equipped for the most delicate operations, had been inaugurated. Regular, unannounced inspection visits were made in order to ensure that prison staff carried out their functions correctly; those visits made it possible to establish direct contact between Ministry of Justice officials, the National Prison Department and prisoners. Those visits were also a sign of the Government's concern over the health and diet of prisoners, particularly in view of the need to prevent the possible spread of tuberculosis.

12. While reinforcement of the democratic regime through the progressive strengthening of State institutions was a priority, it must be accompanied by citizen participation and by efforts to inform people of their rights. In order to ensure more widespread awareness and exercise of human rights, the Peruvian Government had set up training programmes such as that of the National Council of Human Rights, which was aimed at making teachers nothing less than human rights advocates for their students through the use of documents and other teaching materials designed for that purpose.

13. The Peruvian State was also concerned about certain vulnerable groups of the population, particularly women and children. The rights of women and their participation in the life of society on an equal basis with men was a problem to which the Government attached great importance. The Permanent Committee on Women's Rights, under the aegis of the Ministry of Justice's National Council of Human Rights, organized courses on women's rights at the level of public bodies, municipalities and grass-roots organizations. Domestic violence was another cause for concern. During the current year, Peru had acceded to and ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, after which the National Council of Human Rights had submitted a draft legislative amendment aimed at bringing national legislation into line with the norms set forth in that international instrument. A training plan had also been developed for the agencies that received and investigated complaints of domestic violence: the police, judges and prosecutors. At the same time, women's units and special offices to deal with women victims of domestic violence were being set up in police stations.

14. However, all those measures to benefit women must be part of a programme that took into account all the problems faced by women. The Permanent Committee, which was the body responsible for proposing policies for the promotion and full exercise of women's rights, was putting the final touches to a national plan of action for women, which would be submitted for the consideration of various governmental bodies.

15. With regard to children, another population group that required particular attention on the part of the State, a national system for children and adolescents had been set up. That system included a "governing body" (Ente rector) responsible for guiding and formulating sectoral and institutional policies and programmes oriented towards children and adolescents. That body's task was to ensure the protection of children and adolescents, monitor respect for, and exercise of, their rights and promote the participation of the institutions responsible for protecting them. It was in the process of developing a national plan of action for children, which would set forth the policies to be followed in the coming years.

16. That body was also in charge of the defensorías, or child protection services, which provided counselling and care to child and adolescent victims of violence and abuse, offering both legal and psychological assistance. There were approximately 75 municipal child and adolescent protection services in the provinces and 35 in the various districts of the capital.

17. The State was also concerned by the approximately 600,000 people who had been displaced as a result of terrorist violence. They had begun to return in 1993, and many people had gone back to their villages of origin. With the help of State organizations, particularly the Assistance Project for Returnees (PAR) and civil society, 120,000 people had been able to return home, and another 135,000 had done so on their own initiative. Of particular significance was the fact that 56 per cent of the displaced persons in the Departments of Ayacucho, Apurímac, Huencavelica and Junín, the areas most affected by the displacement, had returned. His delegation paid tribute to the efforts made in that regard by the International Organization for Migration (IOM) and the United Nations Development Programme (UNDP).

18. The State had also carried out over 200 infrastructure projects devoted to industry, education and health, as well as renewed agricultural activity through the provision of agricultural input, facilities and tools. It had also launched development projects in the above-mentioned departments, which had been affected by population displacements. However, in view of the scale of the problem and the amount of funding needed, a group of donors had been formed with the participation of various cooperation institutions in order to obtain the resources needed to finance the many assistance projects. The past and continuing changes in Peru were proof of Peruvians' ardent wish to change and improve their society. However, there was still much to be done and many problems to be solved. He hoped his statement had shown that the Peruvian Government was making every effort, and had the will, to ensure to Peruvians the full exercise of their human rights by promoting and protecting those rights. It was also in that spirit that his delegation had come to meet with the Committee.

19. The CHAIRMAN invited the Peruvian delegation to reply to the questions under part I of the list of issues to be taken up in connection with the consideration of the third periodic report of Peru (M/CCPR/C/57/LST/PER/4).

Part I

Question (a) What steps have been taken to address the Committee's concerns and to implement its recommendations - as contained in the Concluding Observations adopted by the Committee at the end of the consideration of Peru's second periodic and supplementary reports - insofar as the implementation of articles 4, 6, 7, 9, 10 and 14 of the Covenant is concerned? (See paras. 8, 9, 10, 12 and 14 of document CCPR/C/79/Add.8.)

20. Mr. REYES-MORALES (Peru) referred to paragraph 8 of the above-mentioned document, which concerned the excessive force and violence used by the military, the para-military, the police, and armed civilian groups and the absence of civilian control. Peru had been faced with the phenomenon of terrorism since 1980 and had endured incessant action by the Sendero Luminoso and the Tupac Amarú Revolutionary Movement (MRTA), which had claimed over 25,000 deaths and cost over $25 billion in property damage, for over 10 years before the international community had decided to condemn the groups in question. During that difficult period, the Peruvian State had had to deal with criminals who, in the middle of a serious economic crisis, had succeeded in infiltrating various levels of civil society. While it was true that the armed forces and police had committed some abuses in order to restore order to the country and thereby ensure the safety of the population, those were isolated cases which in no way constituted systematic human rights violations. Furthermore, since 1992, pursuant to a decision by the President of the Republic, the Peruvian State had reorganized its national defence system and had developed strategies aimed at re-establishing the rule of law and the functioning of the national institutions. The most important goal had been to regain the confidence of the people, who had, moreover, cooperated directly in the re-establishment of security in the country.

21. Every regulation in the Peruvian defence system was based on the principle that human beings were the highest value, a fact which, moreover, explained the great decrease in complaints of alleged human rights violations. The State had recently been forced to resort to so-called "anti-terrorist" criminal legislation and to the suspension of certain rights, which was authorized by the state of emergency, in order to deal with terrorist crime. A legal and institutional structure had also been set up to combat the terrorism that had spread throughout the country and seriously threatened the very life of the nation.

22. States of emergency were covered by Act No. 24150 and Decree-Law No. 749. When the army took control of domestic order by Government decree, the political-military authority assumed the role of coordination and consultation among the various public and private sectors in order to implement plans for a return to peace and development. It also directed development activities in the areas under its jurisdiction and, to that end, the competent authorities placed at its disposal the resources, material, services and staff necessary to the fulfilment of its mandate. The members of the national police were also placed under the authority of the political-military command.

23. Proclamation of a state of emergency did not suspend the exercise of proceedings for habeas corpus and actions of amparo. With regard to the rights subject to restriction or suspension, he explained that a judge must examine the decision to restrict in order to see whether it was reasonable and proportionate, in accordance with the provisions of article 200 of the Constitution. Similarly, article 8 of Decree-Law No. 52, the Public Prosecutor's Department Organization Act, stipulated that the proclamation of a state of emergency did not suspend the activity of that Department or the right of citizens to have direct recourse to it.

24. Lastly, with regard to the restoration of democracy and the rule of law mentioned in paragraph 14 of the document referred to in the question, he said that Peru was in the process of strengthening the democratic system and the full respect for human rights, as was shown by, inter alia, the organization of a constitutional referendum in 1993, the holding of general and municipal elections in 1995, the election of members of the Constitutional Court and the appointment of an Ombudsman.

Question (b) What has been the impact of the imposition, during the period under review, of successive states of emergency on the exercise of the rights guaranteed under the Covenant? Please clarify what safeguards and remedies have been available to individuals during those periods (see paras. 111 to 116 of the report).

25. Mr. REYES-MORALES (Peru) said that article 137 of the Constitution authorized the declaration of a state of emergency in the face of disturbances of internal peace and order, disasters, or serious circumstances that affected the life of the nation. In such cases, rights relating to personal freedom and safety, the inviolability of domicile and freedom of assembly and movement could be restricted or suspended. However, article 200 of the Constitution stipulated that the issuing of writs of habeas corpus and amparo could not be suspended during states of emergency and that a judge must examine restrictive measures to determine whether they were reasonable and proportionate. Article 8 of the Public Prosecutor's Department Organization Act (Decree-Law No. 52) stated that the activity of that Department, and the right of citizens to have direct recourse thereto, were not suspended during states of emergency, except with regard to the constitutional rights suspended under the above-mentioned state.

26. Acts Nos. 25397 and 25398 regulated states of emergency and the exercise of the remedy of habeas corpus. But, although article 29 of Act No. 25398 limited the exercise of the right to initiate proceedings for habeas corpus in the courts during states of emergency, the Constitution (art. 200) had tacitly repealed any type of limitation on the exercise of that right. Lastly, article 15 of Act No. 26520 (act establishing the post of Ombudsman) stated that the latter's activity was not suspended under states of emergency.

Question (c) Please clarify whether the prevailing violence within the country has had a specific impact on the enjoyment by members of indigenous groups of their rights under article 27 of the Covenant.

27. Mr. REYES-MORALES (Peru) said that the State recognized the right of indigenous groups to preserve their cultural and religious identity and to use their own language. However, the terrorist groups Sendero Luminoso and MRTA had violated the rights of indigenous communities for years, forcing those communities to join them or move to a different area. The return of peace had restored calm to indigenous communities and allowed their members to lead a more normal cultural life, practise their religion and use their language. Those who had been displaced by the wave of violence were returning to their places of origin thanks to the Assistance Project for Returneees (PAR). The Government was particularly concerned by the case of the Ashaninkas, which had been subjected to slavery-like practices and cruel and inhuman treatment by terrorist groups.

Question (d) Please provide detailed information on the scope and effect of the Amnesty Decree, adopted by Congress on 14 June 1995, concerning human rights abuses, and of Law No. 26492, adopted on 28 June 1995, precluding the judiciary from challenging the validity of the amnesty before courts. What measures have been taken to ensure victims of human rights violations the right to an effective remedy under the Covenant?

28. Mr. REYES-MORALES (Peru) said that Act No. 26479, which had granted general amnesty to members of the military and the police and to civilians involved in various events, had been adopted by the Democratic Constituent Congress and promulgated by the President of the Republic on 14 June 1995. That law had always been a subject for debate and analysis, particularly with regard to its implementation and effects. For example, members of the armed forces had been implicated in what was known as the La Cantuta case: the provisions of the Amnesty Law had, indeed, been applied to the judicial investigation and to various judicial actions related to that case, but the Government had authorized State funding to compensate all the members of the families of the presumed victims, and over 80 per cent of the victims' families had been compensated. He also pointed out that Peruvian criminal and civil law established ordinary procedures under which any citizen who considered that he had suffered damage could request compensation under the law. Moreover, on 12 October 1995, all the relatives of the victims of the La Cantuta case had been informed that they should present themselves in order to receive the compensation specified in the decision handed down by the competent legal body.

Question (e) Please elaborate on measures taken to investigate cases of summary executions, disappearances, torture, rapes and other inhuman or degrading treatment or punishment, arbitrary arrests and detention of persons by members of the army and security forces, or by paramilitary and other armed groups (such as the peasant patrols); to bring those found responsible before the courts; to prevent any recurrence

of such acts and as to whether the adoption of the Amnesty Decree has had any negative impact on these investigations (see paras. 133 and 370-372 of the report).

29. Mr. HERMOZA-MOYA (Peru) replied that the war against terrorist violence had been waged with the help of the armed forces and the national police. It was undeniable that some isolated excesses had occurred, but they in no way represented a pattern of human rights violations. However, the Government, anxious to avoid repetition of such abuses, had taken steps to ensure effective control of the fight against insurrection as part of its programme for the restoration of peace. All the violations that had been committed had been investigated, and the people responsible for them had been punished. At the same time, the role of the Public Prosecutor's Department had been strengthened, and the establishment of a national register of prisoners had also been a sign of improved monitoring. Furthermore, provincial prosecutors' offices were required to report on the situation of human rights in their districts and the Attorney General published a monthly report based on information provided by the provincial prosecutors' offices. All representatives of the Public Prosecutor's Department carrying out their functions in the areas under a state of emergency benefited from guarantees established by the ministerial decree of 12 November 1991. A decree-law mandated very severe punishments for State employees or officials who had ordered or committed acts resulting in the duly substantiated disappearance of a person in custody; furthermore, all branches of the Peruvian National Police were required to transmit immediately to the provincial prosecutors any complaint concerning disappearances in their district, the police were obliged to maintain a register recording those complaints, and the provincial prosecutors were required to investigate any complaint of that kind. Efforts were also made to ensure the training of army officers and non-commissioned officers, who were required to attend a course on human rights. High officials attended a course given in the United States, then organized equivalent courses in Peru.

Question (f) Please provide information on: (i) grounds for arrest and detention of persons suspected of being involved in terrorism and treason; (ii) the system of control over arrests and detention; and (iii) numbers of people arrested and detained, including length of detention without trial.

30. Mr. HERMOZA-MOYA (Peru) said that the Constitution expressly stipulated that no one could be arrested without a written and substantiated warrant issued by a judge; police arrest was possible in cases of flagrante delicto, but the person being interrogated must be brought before a judge within 24 hours except in cases involving terrorism, espionage and drug-trafficking. In such cases, the police could place suspects in detention for a maximum of 15 days, reporting that fact to the Public Prosecutor's Department and the judge. All the regulations and requirements to be respected during police investigations of cases of terrorism were set forth in Decree-Law No. 25475. No one had ever been, or was currently being, held in custody without being the subject of legal proceedings. There were two types of prisoners in custody: accused persons and convicted persons. In cases involving terrorism, there were, in fact, a disproportionate number of accused persons who had not been brought to trial, but whose cases were being investigated,

in relation to the number of convicted persons; the former accounted for 66 per cent and the second for 34 per cent of the total. Measures had been taken to remedy that undeniable imbalance with a view to speeding up judicial procedures.

Question (g) Please elaborate on the effect of the adoption of the Amnesty Decree on Decree-Law No. 25992 of 26 June 1992, introducing penalties for those responsible for disappearances, on Decision No. 342-92-MP/FN of 10 June 1992, establishing the Register of Complaints relating to Disappeared Persons, and on Act No. 26295, establishing the National Register of Detainees and Persons Sentenced to Custodial Sentences. (See paras. 176-180 of the core document.)

31. Mr. REYES-MORALES (Peru) said the adoption of the Amnesty Law had never suspended the application of criminal legislation mandating penalties for those responsible for enforced disappearances, in other words, Decree-Law No. 25992, which was still in force. The Amnesty Law would not apply to acts committed after the promulgation of the Decree-Law establishing the offence of enforced disappearance. Furthermore, the decision mandating the establishment of a Register of Complaints relating to Disappeared Persons had not been affected by the Amnesty Law, and the Public Prosecutor's Department was still responsible for investigating any reported disappearance. That Department therefore recorded complaints and transmitted them to the Minister of Justice, who investigated the situation and, if an enforced disappearance had really taken place, took appropriate action.

32. The CHAIRMAN reminded the Peruvian delegation that the question referred not only to the past, but to everything that had occurred during the period under consideration: 1992 to the present.

33. Mr. REYES-MORALES (Peru) said that, in most cases, reports of disappearances, whatever their date of occurrence, were insufficiently substantiated for the participation of any civil servant to be suspected, and many complaints did not go beyond the stage of police investigation.

Question (h) Bearing in mind article 14 of the Covenant, please provide detailed information on the application in practice of legal provisions relating to the trying of terrorists under Decree-Laws Nos. 25475 of 5 May 1992 (Anti-Terror Law) and 25659 of 12 August 1992 (Treason Law), and on the safeguards and remedies available to persons suspected of having committed such crimes. In particular, please clarify how article 15 of the Anti-Terror Law relating to "faceless judges" and article 6 of the Treason Law relating to secret military tribunals are implemented; whether confessions or testimony obtained under duress can be used before military courts; and whether these procedures are compatible with article 14 of the Covenant (see paras. 219-233 of the

report). Please clarify what is the competence of the military courts to try civilians and indicate the powers of the legal coordinating council.

34. Mr. REYES-MORALES (Peru) said that, as part of the set of political and military measures that had been instituted on 5 April 1992 to combat terrorism, the Peruvian Government had established the crime of terrorism and the procedure to be followed in dealing with it and had modified the scale of penalties by the introduction of life imprisonment. The Treason Law called for the application of the summary procedure mandated in the Code of Military Justice for judgements handed down in the field of operations. The examining magistrate had 10 full days to hand down a judgement. All the regulations applicable to the police investigation, trial and sentencing were set forth in Decree-Law No. 25744, which authorized the police and, in the absence of representatives of the police in a region, the armed forces, who must immediately consult the police, to carry out investigations and arrests in cases involving terrorism. The police had 24 hours to report arrests to the provincial prosecutors' offices. Consequently, the Public Prosecutor's Department exercised control over arrests and monitored respect for legality and human rights and, therefore, respect for international instruments. The defendant's rights were ensured as early as the stage of the accused's preliminary statements.

35. The introduction of "faceless judges" had been necessary in order to ensure the safety and protect the lives of judges, who were constantly targeted with terrorist threats and were also the victims of murder. The anonymity of judges and other officers of the court was thus preserved in their own interests, and a secret system of codes and keys replaced the judge's signature at the bottom of the sentence. Also for reasons of security, convicted terrorists served their sentences in specially equipped prisons.

36. With regard to the competence of the military courts to try terrorist crimes, he explained that Decree-Law No. 25475 established procedures for the investigation, trial and sentencing of terrorist crimes in ordinary cases, while Decree-Law No. 25659 established the crime of treason, which included various acts of so-called "aggravated" terrorism and were handled exclusively by the military courts. It had been necessary to assign the trials of civilians accused of aggravated terrorism to the military courts because the ordinary courts were suffering serious threats and pressure from clandestine terrorists and, as a result, were prevented from acting. The result was de facto impunity for those responsible for terrorist acts and, although the law was being correctly applied, many of those criminals had been freed. For example, Abimaël Guzmán, who was responsible for over 25,000 deaths, had been arrested but, owing to the limits of ordinary law, had been acquitted after a trial that had followed all the correct legal procedures. The new system established by the Treason Law had made it possible to punish that heinous terrorist as he deserved. The military courts were equipped to ensure the safety of their judges and, consequently, were able to carry out their judicial functions.

37. Mr. HERMOZA-MOYA (Peru) said that the Government had launched a broad programme to modernize the State with a view to enhancing the efficiency of its institutions. For example, Act No. 26623 of 18 June 1996 had set up a Judicial Coordination Council, composed of three Supreme Court judges and responsible for seeking ways to re-establish the people's confidence in the administration of justice, which had always suffered from a certain lack of credibility. The council was an inter-institutional one whose task was to coordinate the general policies of the judicial institutions and to set complementary policies between all State institutions, including the prison service. The legislators' intention had been to modernize the entire judicial system in order to, inter alia, mitigate the consequences of the congestion in the courts and the slowness of procedures - a constant problem in Peru - for the prison population. The slowness of the judicial process did, in fact, result in unequal treatment of detainees, many of whom were accused and awaiting trial. To the basic inequity of that situation was added the material problem of the overpopulation in the prisons and the current inability of the prison system to fully exercise its role of rehabilitating prisoners. The Judicial Coordination Council therefore attempted, as a last resort, to find a solution to all those problems through an overall modernization of all institutions, coordination of the plans and development programmes of each institution, joint training programmes, information networks, exchanges of the results of studies, and permanent or temporary liaison committees working with other institutions involved in the administration of justice with a view to establishing common standards of judicial conduct and to eliminating the risk of conflicts.

38. Mr. REYES-MORALES (Peru) added that the Government, desiring to guarantee access to justice by members of scattered indigenous minorities in remote regions of the country, had modified the responsibilities of justices of the peace, authorizing them to hear cases that had previously been dealt with by the courts of first instance. As a result, members of indigenous communities no longer needed to travel to the capital for that type of case.

Question (i) Please elaborate on the concrete measures which have been taken to preserve the cultural identity, language and religion of members of indigenous groups and provide examples, if any, where provisions in article 15 of the Penal Code relating to the "error of understanding" have actually been enforced by courts (see paras. 382 and 383 of the report).

39. Mr. REYES-MORALES (Peru) said that Peru was currently chairing the United Nations Working Group responsible for preparing a draft declaration on the rights of indigenous peoples, a fact which showed its commitment to the rights of those peoples. At the national level, the Government had ratified the International Labour Organization (ILO) Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, thereby completing a legal arsenal that allowed Peru to give full effect to article 27 of the International Covenant on Civil and Political Rights. It had been decided that, until the year 2004, 9 August would be designated "Peruvian Indigenous Peoples' Day", an occasion for increasing society's awareness of those groups and carrying out activities to promote their interests. In the field of education, the 1995-2005

bilingual intercultural teaching programme had been implemented, and bilingual teachers were currently being trained. There were also plans to launch an ethnodevelopment programme, covering the Quechuas and Aymaras of the Andean region and the Aguarunas, Ashánicas and Shipibos of the Amazon region and involving seven institutions.

40. The CHAIRMAN thanked the Peruvian delegation for its detailed information and invited the members of the Committee to comment on part I of the list of issues.

41. Mr. BRUNI CELLI thanked the Peruvian delegation for its replies. He emphasized that while every State that suffered from terrorism had the right and the duty to fight vigorously to protect the existence of the nation and its institutions, that must be done with respect for the law. Whatever the causes and origins of terrorism, those responsible should be prosecuted and punished. The Committee had had concerns in that regard during its consideration of the second periodic report of Peru in 1992, and its fears had not been allayed since, according to reliable sources, violence had not ended in Peru. While terrorists were not bound by any moral and legal obligations since they were criminals who must be treated as such, the State had the duty to ensure safety and the rule of law and to defend the population while respecting constitutional and legal rules.

42. The 1993 Constitution enshrined the entire range of human rights, explicitly setting forth many of them and explaining (art. 3) that other, similar, rights, such as those established in international treaties, were also protected. It was, therefore, clear that international treaties were part of domestic law and even had constitutional status. The fourth final and transitory provision of the Constitution confirmed that fact by stating that the norms recognized in the Constitution were to be interpreted in accordance with the Universal Declaration of Human Rights and the treaties and international instruments concerning those matters which Peru had ratified.

43. He therefore wondered how it was possible to reconcile article 6 of the Covenant with the persistence of enforced disappearances and summary executions of which the massacres at La Cantuta and Barrios Altos were examples. Similarly, the first Amnesty Law of 14 June 1995 was incompatible with the Covenant because it granted a general amnesty to members of the armed forces and police and civilians who had been indicted, and even tried and convicted, for actions committed individually or collectively during the past 15 years. That Law was in violation of the article of the Covenant that guaranteed the right to an effective remedy. The amnesty created a great injustice with regard to victims and their families. A further, and very serious, point was the proven fact that the best way of encouraging the persistence of human rights violations was to ensure the impunity of those responsible. The second Amnesty Law, dated 28 June 1995, which made implementation of the provisions of the first Law obligatory for judicial bodies, was incompatible with the principle of the independence of the courts. Furthermore, the existence of special tribunals and "faceless judges", who carried out their functions within the prisons themselves, was detrimental to the independence of the judiciary. It was also difficult to reconcile the Anti-Terrorist Laws (Nos. 25475 and 25659) with some provisions of the Covenant, particularly articles 7, 9, 10 and 14.

44. Mr. BUERGENTHAL noted with satisfaction that the Peruvian delegation was composed of high-level officials, a fact which led him to hope that the Committee's comments on implementation of the Covenant in Peru would not remain a dead letter. While he was aware of the problems associated with the violent terrorism with which the Peruvian Government had been confronted for the past 10 years, he associated himself with Mr. Bruni Celli's remarks concerning the obligations incumbent on a State party under the Covenant. Some of his questions were related to those of Mr. Bruni Celli, but it was important to clarify certain points. He requested confirmation that the Amnesty Law that had been adopted concerned only human rights violations committed by State officials and did not apply to people from both sides of the conflict who had committed offences. If that was indeed the case, and the text of the Law left little doubt in that regard, there was a kind of legalized retroactive impunity by the authorities which constituted a retroactive ratification of the offences committed. He recalled that in El Salvador, where civil war had resulted in some 60,000 deaths, amnesty had been granted to both parties in the name of national reconciliation. Unfortunately, such did not appear to be the case in Peru.

45. Was it true that the relevant legislation made no provision for compensating the victims of human rights violations covered by the amnesty? In the absence of a specific compensation act, the victims had no possibility of compensation and the guilty were not punished.

46. Furthermore, was it true that the legality of the amnesty could not be contested in the Peruvian courts even though it deprived individuals of certain rights under the Covenant - which had, nevertheless, the status of law in Peru - and doubtless of other rights written into the Constitution?

47. Having read a number of laws concerning aggravated terrorism and the crime of treason, which corresponded to serious acts of terrorism, he had the impression that the Peruvian authorities were attempting to use those provisions to escape the international obligations that they had undertaken. He doubted that that legislation met the standards of a democratic society that valued the rule of law. In particular, he wondered whether a person accused of aggravated terrorism or treason had the right to challenge those accusations in a civil court before being brought before a military tribunal. In general, was there a civilian authority responsible for determining whether accusations of aggravated terrorism were well founded, or were cases simply brought immediately before a military court on the basis of suspicion alone?

48. Could the Peruvian delegation confirm that the military tribunals that dealt with cases involving terrorism were made up of officers whose identities were known neither to the accused nor to their lawyers and that the trials were not public? Apart from the difficulty of reconciling such a situation with any interpretation of the guarantees of due process, it was difficult to see how the independence and impartiality of such courts were ensured thereby. When no one could know the identity of the judges, how could anyone know whether they were impartial? Generally speaking, who was responsible for ensuring respect for the right of accused persons to a fair trial? Furthermore, he wondered whether people who had been convicted by one of

those courts had the right to contest the lawfulness of their trials before a civil tribunal and whether they could invoke the guarantees set forth in the Covenant.

49. The anti-terrorist legislation adopted in Peru had led to the arrest and conviction of many innocent people. The President of the Republic had admitted that fact and had promised to remedy the situation, which was a welcome development. Under those circumstances, was it not time to do away with the military courts, which violated the principle of the guarantees of due process recognized in all international human rights instruments?

50. He would be grateful if the Peruvian delegation would give detailed replies to each of the questions that he had asked, and he hoped that those replies would demonstrate that in Peru, all human beings enjoyed the rights guaranteed under the Covenant, both de jure and de facto, and that he was mistaken in the belief that the amnesty laws and anti-terrorist legislation were seriously incompatible with the Covenant.

51. Mr. PRADO VALLEJO said he fully understood the concerns of the Peruvian Government with regard to terrorist violence since he himself came from a country, Ecuador, that had experienced such violence for many years but had, fortunately, returned to a state of peace. The head of the Peruvian delegation, who was, moreover, also the country's Minister of Justice, had stated that the human rights violations in Peru had been individual violent acts. Personally, he did not agree; he thought that there was, on the one hand, a kind of collective violence exercised by the members of terrorist groups and the guerrillas and, on the other, acts of violence committed by State officials, which entailed massive human rights violations.

52. The struggle against terrorism had borne fruit in some respects, but there was reason to be concerned by the fact that, in the name of that struggle, the Peruvian authorities had set up a system of repression and violence that was utterly contrary to the Covenant. In order to combat terrorism, the authorities had taken disproportionate measures engendering grave and systematic human rights violations. For example, they had adopted a number of decrees calling for drastic penalties for acts of terrorism and granting very broad powers to the army and the police. Thus, those institutions had the law on their side when they committed acts of violence. It was undeniable that a number of the decree-laws that had been adopted were contrary to the provisions of the Covenant, particularly Decree-Law No. 25659, which covered the crime of treason and authorized the military to try civilians. In that regard, he referred to the Committee's general comment No. 13 concerning article 14 of the Covenant, which expressly stated that the trying of civilians by military courts should be very exceptional. Furthermore, while the remedy of habeas corpus had been restored in theory by Act No. 26248, it did not exist de facto.

53. It also seemed that people accused of terrorism could be tried by anonymous judges and that those trials often took place behind closed doors and within prisons. Article 14 of the Covenant specifically stated, inter alia, that everyone was entitled to a fair and public hearing by an

independent and impartial tribunal. It was clear that the provisions of Peruvian anti-terrorist legislation were in complete violation of the Covenant.

54. Under the Repentance Law, large numbers of citizens in police custody, many of them innocent, were making statements in the hope of being released. Furthermore, the police could hold a suspect in pre-trial custody for 15 days or even longer, and it was known that the most serious human rights violations were committed against people being held in temporary custody and that people so detained were often subjected to torture and ill-treatment.

55. He mentioned a number of disturbing facts. In particular, with regard to the right to a defence, paragraph 132 of the periodic report (CCPR/C/83/Add.1) stated that, in proceedings for terrorism, lawyers could not act simultaneously for more than one defendant. Furthermore, the Peruvian press had reported that lawyers defending people accused of terrorism received threats and were often accused of seeking to justify terrorism. The doctors who cared for people accused of terrorism were also the victims of threats and reprisals, even though they were only doing their humanitarian duty. The military judges responsible for cases involving terrorism handed down sentences at the end of summary proceedings and within a very short time. Prisoners could be kept in solitary confinement for a year, which was quite inhuman. Their visiting rights were very restricted (half an hour every three months for family members). Accused persons were treated in the same way as those who had been convicted.

56. Sentences handed down by military courts could be overturned only if the sentence was to 30 years or more of imprisonment. Furthermore, the death penalty had been incorporated into the Peruvian Constitution, a fact which was in complete violation of the American Convention on Human Rights, although Peru was a party to that Convention. States of emergency could be renewed every 60 days, although it was known that the most serious collective human rights violations were committed during states of emergency, when political power was placed under the absolute control of the army and the police. The remedy of habeas corpus and amparo proceedings were not possible during states of emergency.

57. The Amnesty Law concerned only State officials who had committed human rights violations. Civilians did not have the benefit of that Law. The Inter-American Court of Human Rights had severely criticized the Peruvian Amnesty Law, saying that it was contrary to that State's international obligations. Moreover, the Peruvian Congress had adopted provisions, in interpretation of that Law, in order to prevent judges from knowing to which individuals it was applicable. Furthermore, according to Peruvian non-governmental organizations (NGOs), many people currently in detention had been wrongly accused of terrorist acts. Not only was cruel, inhuman or degrading treatment very widespread in the prisons; it was also tolerated by the authorities. Amnesty International claimed that 5,000 detainees were currently without any of the guarantees provided under the international instruments to which Peru was a party. In addition, there had been many disappearances of individuals between 1990 and 1995. The high officials and

army officers implicated in human rights violations, as in the La Cantuta University case, had generally received only light sentences and had then benefited from the Amnesty Law.

58. All of those facts showed that the provisions of the Covenant were not being implemented in Peru. Of course, the authorities of that country must defend themselves against the terrorist threat, but they could not do so by practising State terrorism.

59. Mr. ANDO said he was pleased by the cooperation of the Peruvian authorities, who were quite punctual in sending their periodic reports to the Committee.

60. Everyone was aware that terrorism was a threat to the protection of human rights, and there was no doubt that the Government was attempting to overcome difficulties. The purpose of the State party's dialogue with the Committee was to bring to light the problems that could arise with regard to the protection of human rights and, in so far as possible, jointly to seek ways to remedy them.

61. He associated himself with the concerns expressed by the other members of the Committee and would limit his questions to the implementation of article 27 of the Covenant. With regard to paragraph 371 of the periodic report (CCPR/C/83/Add.1), he asked how the authorities distinguished between true terrorism and, for example, the case of a peasant obliged under duress to participate in terrorist activities. In practice, the distinction must be a fine one; moreover, the Peruvian delegation had acknowledged that mistakes had been made in the past. He asked the delegation to indicate what measures had been taken or were planned to improve the situation in that regard.

62. Referring to paragraphs 379-384 of the report (CCPR/C/83/Add.1), he asked whether the policy of protection of ethnic and racial minorities in Peru, mentioned in paragraph 384, reflected a position of principle on the part of the authorities.

63. Lastly, with regard to the protection of the rights of women belonging to indigenous communities, he noted that, under the customs of those communities, the rights of women were often not protected as the Covenant required. How did the Peruvian State ensure protection of the rights of indigenous women?

64 Ms. MEDINA QUIROGA associated herself with the questions asked by Mr. Bruni Celli and Mr. Prado Vallejo. With regard to "non-aggravated" terrorism, which was handled by the civil courts, it was her understanding that the judges at first instance responsible for cases of that type came from various regions of the country, exercised their functions on a temporary basis and were placed at the disposal of the Executive. She asked for further explanation of that point.

65. She inquired how the right to a defence, covered under article 14 of the Covenant, was regulated in Peruvian law. According to some reports, for example, lawyers in Lima could meet with their clients in custody for only 15 minutes per week and had great difficulty in gaining access to the

file of the case. What was the exact situation in that regard? Furthermore, in view of the rapidity with which sentences were handed down in cases involving terrorism, how was the accused's right to the time needed for the preparation of his defence guaranteed? She asked for information on the procedure applied in that regard.

66. It was clear that some improvements had been made to the anti-terrorist legislation, particularly by the adoption of Act No. 26590, but the provisions of that law - whether applied to terrorism or aggravated terrorism - had continuing serious consequences for a number of innocent people, who were usually detained for very long periods. She pointed out that the Peruvian authorities were aware that the provisions currently in force were causing many innocent people to be brought before the courts, a fact which, moreover, was demonstrated by the Ombudsman's proposal to set up a committee responsible for proposing to the President of the Republic measures granting pardons to people who had been convicted on the basis of insufficient evidence. Nevertheless, a number of causes for concern remained, particularly in view of the existence of Act No. 26329, which had previously targeted ordinary criminals and had been extended to people accused of terrorism. Having read the text of that Act, it was her understanding that a person could be accused of terrorism and tried simply because he did not have identity papers at the time of his arrest. If that was indeed the case, it was a very serious matter. Furthermore, a number of civil registration documents had been destroyed, which was disturbing since thousands of children were thereby left without identity documents and might subsequently be accused of terrorism under Act No. 26329.

67. The responsibilities and jurisdiction of the Judicial Coordination Council were another source of concern. That body apparently administered and controlled both the Judiciary and the prosecution. Its functions were not limited to coordination since it could appoint and dismiss judges and prosecutors, a fact which, moreover, the Ministry of Justice had confirmed in an interview published in Peru. That Council could also reorganize the Judiciary and the Public Prosecutor's Department within a time period which was set by it alone. It could create and suspend judicial bodies, grant them jurisdiction, etc. Those various facts hardly seemed to be consistent with observance of article 14 of the Covenant. Furthermore, were the laws establishing the Judicial Coordination Council constitutional? She asked for further information on all those points.

68. Pursuing the question of the implementation of article 14 of the Covenant, she noted the existence of laws that placed major restrictions on the right to a defence. In particular, lawyers were required to endure long and discouraging procedures and those who refused to do so were subject to very high fines. Under those circumstances, it was doubtful that lawyers could carry out their functions correctly. She thanked the Peruvian delegation in advance for replying to all of her questions.

69. Mrs. CHANET said that, after considering the second periodic report of Peru in 1992, the Committee had made recommendations concerning the restoration of constitutional guarantees, the fight against impunity and full respect for all the rights guaranteed by the Covenant. In that regard, she welcomed the positive developments that had occurred since that time: the

entry into force of the new Constitution of 1993 and the establishment of the Constitutional Court. On the other hand, the adoption of the 1995 Amnesty Law and the extension of the scope of the death penalty under article 140 of the Constitution hardly seemed in line with the recommendations made by the Committee in 1992. In that regard, she associated herself with the questions raised by Mr. Buergenthal regarding the biased nature of the Amnesty Law, which applied only to members of the security forces.

70. With regard to the implementation of article 140 of the 1993 Constitution, which had added terrorism to the list of capital offences, she asked exactly what the Peruvian authorities meant by a "terrorist act"; in other words, which terrorist-related crimes could carry the death penalty. She was particularly concerned by the fact that the representatives of the Peruvian Government had announced that 5,000 people had already been sentenced or imprisoned for so-called terrorist acts, and there was no doubt that some of those 5,000 people had been wrongly convicted and even, perhaps, executed. She asked the Peruvian delegation for details on the matter.

71. While the adoption of the new Constitution in 1993 had been an undeniable step forward, she noted that the majority of the laws subsequently adopted violated the guarantees set forth in that Constitution. For example, judges could no longer invoke the unconstitutional nature of laws, and the right of individuals to pursue constitutional remedies had been restricted. She asked the Peruvian delegation to indicate whether those were not clear restrictions on the constitutional guarantees themselves.

72. Mr. KLEIN said the report of Peru included a great deal of useful information in several areas. However, he was surprised by the absence of information on the role of the Judiciary and the administration of justice. That omission might be due to the fact that it would be difficult to claim that the military courts that currently existed in Peru made a real contribution to implementation of the rights set forth in the Covenant. In that regard, he asked whether there were plans to abolish or, at least, to make major changes in the current system of military justice.

73. The adoption of the 1995 Amnesty Law was in itself proof that serious crimes had been committed by the people targeted by that Law: many State officials, from high-level members of the Government and Parliament to ordinary policemen and servicemen. The Peruvian Government was certainly not unaware of the Committee's unfavourable view of the amnesty laws, which, in general, did nothing to restore the rule of law but, on the contrary, encouraged the persistence of reprehensible practices, particularly persons in power granting amnesty to themselves. State officials continued to commit massive human rights violations and torture remained common practice.

74. He therefore wondered whether, since June 1995, any State officials had been prosecuted for serious human rights violations, whether those convicted of such crimes were held in the same prisons as ordinary criminals, and whether they were dismissed from their functions after conviction. Were there plans to adopt a new amnesty law applicable to the period subsequent to 15 June 1995? Had the Government informed State officials of the penalties they would incur if they committed serious human rights violations? Lastly,

since the Government itself had admitted that a number of people had been unjustly imprisoned, how were prisoners whose innocence had been recognized treated after their release? Did they receive compensation?

75. In conclusion, he noted that Peru, like all States parties, was required to fulfil its obligations under the Covenant and, more generally, to respect international law, and that it could in no case free itself from those obligations by the adoption of any national legislation.

76. Mr. KRETZMER associated himself with all the statements made and questions asked by the members of the Committee concerning the Amnesty Law, impunity and the role of the military tribunals. He was particularly interested in the phenomenon of terrorism, which not only claimed innocent victims but also threatened to provoke Governments to respond with counter-terrorism, as seemed to have been the case in Peru. In that regard, he was also particularly interested in the question of torture, which seemed to be widely practised during interrogation of people accused of terrorist acts. Peruvian legislation forbidding torture was clearly described in paragraphs 144-157 of the report, but he wondered, in particular, if there were instructions applicable to members of the security forces interrogating prisoners suspected of being implicated in acts of terrorism, what system of monitoring was in force in that regard, and whether there was any mechanism to allow torture victims to file complaints. On the last of those points, he wondered whether responsibility for investigating complaints of torture lay with State officials or with an independent body. He also asked the Peruvian delegation to state how many investigations into acts of torture had been carried out and, if anyone had been convicted, what penalties had been imposed.

77. Mr. BHAGWATI said he was aware of the problems that Peru was facing in its fight against terrorism, a phenomenon which, unfortunately, existed in many countries in the world. However, even while struggling against terrorism, the Peruvian Government remained responsible for protecting and respecting the fundamental human rights enshrined in the Constitution. No legislative measure could be considered as a law unless it was in accordance with the norms of a democratic society under the rule of law. He had doubts as to whether the Amnesty Law that had led to the granting of impunity was in accordance with article 2 of the Covenant, which made it obligatory for States parties to protect and promote human rights and to prosecute those responsible for violations. Furthermore, the police seemed to have virtually unlimited powers in interrogating suspects, and the length of pre-trial detention, which could be as long as 30 months in the case of terrorist acts, was clearly excessive. The fact that the deliberations of both civil and military courts were secret could not fail to cause concern regarding the independence and impartiality of the judiciary.

78. He asked whether the Constitutional Court called for in the Constitution had, in fact, been established and, if so, whether it had dealt with cases in which the constitutionality of certain laws had been challenged. He also asked whether an Ombudsman had been appointed, as called for in the Constitution and, if so, what his responsibilities were. Lastly, he asked what provisions guaranteed the security of tenure of judges in the various courts.

79. Mr. POCAR, like the other members of the Committee, stressed the fact that the Amnesty Law was inconsistent with the Covenant. He quoted paragraph 15 of the Committee's general comment No. 20 on article 7 of the Covenant, which read: "The Committee has noted that some States have granted amnesty in respect of acts of torture. Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future". The Amnesty Law was contrary not only to the Covenant, but also to the provisions of the Peruvian Constitution itself, a fact of which the authorities were, moreover, aware; it was for that reason that they had attempted to circumvent the regulation on the monitoring of the constitutionality of laws by claiming that the law in question granted not an amnesty, but a "pardon", which was a discretionary measure not subject to judicial control. Furthermore, since the Amnesty Law covered all crimes, he wondered whether even those guilty of crimes against humanity could be granted amnesty, a possibility which would be very disturbing. He asked the delegation to explain whether the Amnesty Law also covered crimes related to cases of enforced disappearance.

80. In his opinion, the restoration of the death penalty for terrorist crimes was contrary not only to the Covenant, but also to the American Convention on Human Rights. The Peruvian Government had stated that the country's laws and constitutional norms must be interpreted in the light of the international instruments to which Peru was a party, including the American Convention. Perhaps the delegation could explain to the Committee why, then, the legislature had decided to extend the scope of the death penalty in Peru.

The meeting rose at 6.05 p.m.